

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN MARK NOENNIG**, on February 25, 2003 at 3:35 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Mark Noennig, Chairman (R)
Rep. Eileen J. Carney, Vice Chairman (D)
Rep. Scott Mendenhall, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Rod Bitney (R)
Rep. Larry Cyr (D)
Rep. Ronald Devlin (R)
Rep. Gary Forrester (D)
Rep. Ray Hawk (R)
Rep. Hal Jacobson (D)
Rep. Jesse Laslovich (D)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Penny Morgan (R)
Rep. Alan Olson (R)
Rep. Holly Raser (D)

Members Excused: None.

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Linda Keim, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp for these minutes appears before the content to which it refers.

Committee Business Summary:

Hearing & Date Posted:	HB 682, HB 690, HB 712, HB 625, HB 728, HB 610, 2/21/2003
Executive Action:	HB 682, HB 690, HB 517, HB 535, HB 728, HB 610, HB 625, HB 712

VICE CHAIRMAN MENDENHALL opened the Hearing.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 28.9}

HEARING ON HB 682

REP. FORRESTER asked that HB 682 be removed from discussion and tabled.

HEARING ON HB 690

REP. BITNEY asked that HB 690 be removed from discussion and tabled.

HEARING ON HB 712

Sponsor: **REP. JOHN SINRUD, HD 31, BOZEMAN**

Opening Statement by Sponsor:

REP. SINRUD said that HB 712 establishes a vested property right if a site-specific development plan has been submitted. Owners and contractors will be guaranteed that the rules will not change in the middle of their project.

EXHIBIT(loh42a01)

Proponents' Testimony:

Mark Evans, Southwest Montana Building Industry Association, Bozeman encouraged support of HB 712 and presented written testimony.

EXHIBIT(loh42a02)

EXHIBIT(loh42a03)

Lee Hietala, Bozeman City Commissioner, stated that the rules governing a project should not be changed in the middle of the project. He said that predictability generates and sustains the economy and commented that roads are a major problem in projects. He said that he supports predictability and would like to see economic stability in Bozeman and the state as a whole.

Roger Halver, Montana Association of Realtors, stated that he represents a 2,000 member professional organization dealing in real estate and property management. He said that HB 712 is common sense legislation. The site plan is submitted with a given set of rules, and it should be expected that those rules will not change halfway through the game. Changes cause delays in property development and cost a lot of money.

Carl Schweitzer, Bozeman Chamber of Commerce, said that the plans are approved under a set of guidelines in effect at that time. Cost has been determined, and financing has been secured to move forward. "Once the rules are established, that's the way the game should be played," he said, and asked for a do pass.

Opponents' Testimony:

Linda Stoll, Montana Association of Planners, said the Association has a realistic problem that CHAIRMAN NOENNIG may be able to help with. She read the problematic areas: Section 3 Sub(1), Section 2 Sub(5), and Section 5 Sub (1) which indicate that every project must be approved as submitted with no conditions. Ms. Stoll suggested language change on Page 2, Line 19 so that the word "complete" was substituted for "completed." She asked REP. SINRUD to consider the change.

Harold Blattie, Montana Association of Counties, (MACo), said that Ms. Stoll had stated their position and concerns. He said that the current language might involve possible litigation and significant fiscal impacts.

Informational Testimony: None

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 0 - 20.3}

REP. MORGAN asked for more information about the fiscal impact referred to in earlier Testimony. **Harold Blattie** gave an example of a subdivision application that has 60 lots. DEQ process determines that the site is capable of 50 lots. He asked, "Is there a reduction in value, a loss in the vested property right?"

REP. MORGAN said that a state environmental law will supercede any kind of city or county law anyway. She asked, "That issue aside, how can you be opposed to this?" **Harold Blattie** said that many counties do the sanitary review themselves and are actually contracted by DEQ. The local Board of Health establishes their own regulations. He said that whatever rules are in effect on the date the application comes in are the rules that application should be reviewed under for the entire process.

REP. MORGAN said that it sounded as if MACo was a Proponent. **Mr. Blattie** said that MACo agreed with the concept, not the details.

REP. HAWK asked for confirmation that changing the word "complete" would make the bill more desirable for MACo. **Mr. Blattie** said that determination about a "complete" application

can be vague. The question is, "What is a subdivision application? Is it something written on the back of a napkin or is it a complete application? The determination of 'complete' carries some connotations of when it is complete and when the process actually starts."

REP. HAWK asked what would be necessary to amend the bill to make it work. **Mr. Blattie** said that he had not had the time to adequately review the bill to determine what it would take.

REP. NOENNIG said that he was focusing on the rules and regulations. **REP. SINRUD** said that an application is complete when it has met all the tests. The City of Bozeman will not accept an application unless it is completely filled out; i.e., their guidelines for submittal have been completed. A "complete" application is a "completed" application that is accepted by the city and starts the process.

REP. SINRUD said that Opponent concerns about what a vested right means are on Page 2, Lines 21-24. If regulations are in existence, the landowner or applicant cannot say that they can do whatever they want because they have submitted completed documentation. Under existing laws, cities have the right to make sure the ingress is right, the density is right, and the number of parking stalls is right. The way the bill is written, it is a vested right that gives the government the ability to control existing laws and enforce those upon the project.

REP. NOENNIG said that there are some judgment calls that are allowed within existing regulations. He said that the Proponents and the Opponents are talking about the same thing. Changing the word "completed" will not do it. The issue is on Page 3, Section 5. He suggested inserting a new Subsection (a) into the exceptions saying, "imposition of conditions or restrictions within the scope of the local government regulations in effect at the time of the establishment of the vested property right."

REP. SINRUD said that would be okay.

REP. NOENNIG asked the same question of Mr. Blattie. He said that he understood Mr. Blattie to say earlier that they should be able to impose conditions and restrictions after the Plat was submitted. **Harold Blattie** said that makes sense. He said that concerns of the Subdivision Platting Act can be taken care of in Section 76-3-608, the criteria for local government review of subdivisions which says that an application shall be reviewed with the laws and regulations in effect at the time.

REP. MAEDJE referred to Page 2, Section 3, and voiced concern whether there is a time frame by which the local government has

to give approval of the completed application. **REP. SINRUD** said that in Bozeman a call would be received within 30 days if specific information is missing. He referred to Line 25, (2)(a) and said that the applicant has the ability to say that the application was completed on that first submission date.

REP. MAEDJE asked Mr. Blattie if he would work with **REP. SINRUD** to get a satisfactory amendment if the bill was given a do pass by the Committee. **Mr. Blattie** replied that he would.

Closing by Sponsor:

REP. SINRUD reiterated that HB 712 is about equity and fairness and asked for a DO PASS.

VICE CHAIRMAN MENDENHALL passed the gavel to **CHAIRMAN NOENNIG**.

HEARING ON HB 625

{Tape: 1; Side: B; Approx. Time Counter: 22.3 - 30}

Sponsor: **REP. ROSIE BUZZAS, HD 65, MISSOULA**

Opening Statement by Sponsor:

REP. BUZZAS said that HB 625 authorizes a local government to impose a voted levy to pay for substance abuse programs. The Governor's Task Force on Alcohol, Tobacco and other drugs found that Montana youth have the second highest rate of illicit drug use of all 50 states, the fourth highest rate of alcohol use, and the sixth highest rate of tobacco use. The Task Force recommends legislation enabling counties to pass permissive levies to secure funding. She said that the Interagency Coordinating Council serves as a clearing-house for prevention programs in the state, works to gather statistics and puts out prevention information. One of their goals is to reduce adolescent use of tobacco, alcohol and other drugs by promoting alternative activities and healthy lifestyles.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

CHAIRMAN NOENNIG asked if there is anything within which this substance abuse program could already fit that someone could do a

levy for. **REP. BUZZAS** replied, "No, there is no other program to fit this into right now. Local governments do not have the authority to create levies; that authority comes from the state."

CHAIRMAN NOENNIG asked if there had been interest and support in doing a substance abuse prevention program. **REP. BUZZAS** said that people had planned to come from Missoula and were unable to. She stated, "This bill is a recommendation of the Governor's Task Force."

Closing by Sponsor:

REP. BUZZAS stated that in 1998, Montana spent 15% or \$256 million of the state budget on programs related to the negative effects of substance abuse. The cost to taxpayers of keeping drug related offenders in prison in Montana ranges from \$22,000 per year/person at Montana State Prison, to \$83,289 per year/person at Riverside Correctional Facility. **REP. BUZZAS** stated that community-based prevention programs are cost-effective and successful.

HEARING ON HB 728

{Tape: 2; Side: A; Approx. Time Counter: 0 - 14.4}

Sponsor: **REP. RON STOKER, HD 59, HAMILTON**

Opening Statement by Sponsor:

REP. STOKER stated that HB 728 revises the laws governing rural fire districts. Section 4 clarifies the duties of the Trustees to set a budget and present it to the County Commissioners for approval. The purpose of HB 728 is to determine whether the request for an increased tax levy should go to a taxpayer vote.

Proponents' Testimony: None

Opponents' Testimony:

Jim Dusenberry, President of the Montana Fire District Association, Trustee on the West Valley Fire Department and a Firefighter since 1979, said that HB 728 takes away the authority of the Trustees, changes taxation, and endangers volunteerism. HB 728 changes the structure of the fire districts and the volunteer nature of it, takes away the dedication of the local people, and takes away the responsibility and authority of the Trustees. He said, "Take away some of their control and volunteers will start moving away from this endeavor."

Mr. Dusenberry spoke against confirmation of fire districts. HB 728 says that collection of property taxes for a rural fire district without protest validates the existence of that rural fire district. He said that Section 1, Sub (2) is a big gray area. There are 10,000 volunteer firefighters in Montana, and over 400 Districts that are operated by volunteer trustees. In 1991, the Frenchtown Fire District did a study and found this to be a \$12 million value to the state.

Harold Blattie, Montana Association of Counties (MACo), said that he had not gone through Section 15-10-420 which allows local governments to recover revenue lost due to legislative actions. He said that the Legislature undertook to phase out the Property Tax Reimbursement in HB 20 and SB 417. The Department of Administration has provided copies of a form for calculating floating mills which allows local governments to recover lost revenue and takes into account newly taxable property. He said, "Floating mills are not a tax increase."

EXHIBIT (loh42a04)

Mr. Blattie said that Section 4 on Page 2 needs to be stricken because the time frame is not possible. The mill levy cannot be calculated until the taxable value has been determined.

Curt Belts, Assistant Fire Chief, Missoula Rural Fire District, said that members of fire districts and volunteers have a close relationship with their trustees. Trustees are elected by the voters and have been well-educated about fire. Many fire districts cross county lines, and with this bill, county commissioners would be holding hearings for one budget in two different counties. He asked for a do not pass.

Gordon Gieser, Chief of the Florence Rural Fire District, and a career Firefighter for the Missoula Fire District, said that the fire service was not consulted in any of this draft legislation change. The law has been on the books since 1895 with only minimal change. The local system was not allowed to work because the people with the problem did not go to the local elected Trustees to try and fix it.

Ron Alles, representing Lewis and Clark County Commissioners, said that the reaffirmation of districts is unnecessary because they are already created. He said that the budget process Lewis and Clark Commissioners have in place with their 16 fire districts is more of a partnership. The Board of Trustees sets the budget and their finance people make sure that levies are at or below statutory maximums. He commented that there is a process in place for voter review of any request to exceed the levy, and this has been done three to four times in the past five years.

{Tape: 2; Side: A; Approx. Time Counter: 14.5 - 29}

Gilbert Moore, Trustee with Belgrade Rural Fire District, urged the Committee's consideration to not pass HB 728. He said that the Gallatin County Commissioners also oppose the bill. As a Trustee, he is concerned about the loss of authority that this bill proposes. He stated that Trustees do a good job and serve the special interests of their District without any concern from the County Commissioners because the Commissioners see that the job is already being done properly.

REP. BOB BERGREN, HD 90, stated he is opposed to HB 728.

Pat Clinch, President of Montana State Council of Professional Firefighters, said that they oppose HB 728.

Brett Waters, Chief of the Belgrade Rural Fire District, spoke in opposition of HB 728.

Dave Mason, President of the Lewis and Clark Rural Fire Council, said the Rural Fire Council is opposed to HB 728.

Jerry Shepherd, Fire Chief for West Helena Valley Fire District, said that West Valley is opposed to HB 728.

Paul Laisy, a 30 year veteran of the Missoula Rural Fire District Operations Unit, asked for support of firefighters and districts by opposing HB 728.

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MAEDJE asked if the county commissioners would control the trustees with this bill. **REP. STOKES** said, "No, approval of the budget and its subsequent creation of a tax levy is at the commissioner level." He said that there are 14 fire districts in the Bitterroot. He said that in the Hamilton Rural Fire District, the budget is handed to the commissioners and they simply approve it.

REP. MAEDJE said that he had a fire chief call and ask for support because the reaffirmation would give them an opportunity to enlarge the district. **REP. STOKES** said that the bill makes provision for opting into or opting out with the permission of the majority of the taxpayers. He said that opting into another fire district would require cooperation from the volunteer fire district that was going to accept them.

REP. DEVLIN asked about the current levy cap and Section 4. **Harold Blattie** said that his handout is a copy of the Excel Spread Sheet that makes the calculation of the maximum amount that can be levied. **REP. DEVLIN** asked what the procedure would be if the budget turned in by the Fire District Trustees is higher than their cap. **Mr. Blattie** said that the Board of County Commissioners would advise the Trustees that their budget request exceeded their levy capability and that they would need to make adjustments to bring it within the maximum allowable.

REP. DEVLIN asked if Section 4 was problematic because of the time frame. **Mr. Blattie** agreed and said there is no time for an election under that time frame.

CHAIRMAN NOENNIG asked for clarification of earlier testimony that indicated there is a possibility for a voted levy in the law now. **Mr. Blattie** said, "That provision is in Section 15-10-425."

CHAIRMAN NOENNIG asked who initiates a vote for the additional levy. **Mr. Blattie** said that in the current year, the only option is to reduce the budget request or expend their cash, thereby reducing their reserves. They would go to the voters with their request the next year.

CHAIRMAN NOENNIG asked what caused this bill to come about. **REP. STOKER** said that a retired judge elected to move out of the Florence Rural Fire District into the Missoula Rural Fire District which had a lower rate at the time. After some time, the Missoula Rural District expanded to 26 full-time firefighters and six staff people which required a higher tax rate. The judge's next-door neighbor took the option of joining the Florence Fire District at a low tax rate. The judge wanted to get into the Florence District because none of the growth of the Missoula Rural District was approved by the taxpayers.

CHAIRMAN NOENNIG commented that the purpose behind the bill was to prevent expansion of this fire district to take in the judge but not the neighbor. He asked, "If it does take in the judge, he wants to be able to vote to reduce the taxes. Is that right?"

REP. STOKER said, "Yes, to control the taxes."

CHAIRMAN NOENNIG referred the Committee to Page 7, Line 6 which indicates a retroactive date of applicability of 12/3/1958, and asked **REP. STOKER** to give his closing remarks.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 12.9}

Closing by Sponsor:

REP. STOKER said that the Committee needed to determine whether this bill was in the best interest of the taxpayers and asked for a do pass on HB 728.

HEARING ON HB 610

Sponsor: **REP. BOB BERGREN, HD 90, HAVRE**

Opening Statement by Sponsor:

REP. BERGREN said that HB 610 would eliminate the need for a public hearing when rate increases are 5% or less. He stated that a large amount of money is being spent on holding public hearings to comply with current law.

Proponents' Testimony:

Steve Wade, Montana Rural Water Systems, said that a lot of water and sewer districts have low budgets. He explained that the publishing, mailing, recording and transcription costs of a public hearing are often not needed because no one comes to oppose the increase. Board members are either elected or appointed by elected county officials, so there is no lack of accountability. He said they agree with **REP. BERGREN's** conceptual amendment to add the word "annual" to Page 1, Line 19 and asked for a do pass. Mr. Wade presented a Signature List of 22 citizens who agree with the proposed change.

EXHIBIT (loh42a05)

Mr. Wade entered into the record the written testimony of Dan Keil who is a Proponent.

EXHIBIT (loh42a06)

Bobby Broadway, General Manager, Sun Prairie Village County Water and Sewer District, said that he agreed with previous testimony and asked for a do pass.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. OLSON referred to **REP. BERGREN'S** previous remarks about what would happen if someone protested the rate increase. **REP. BERGREN** said that is in the public hearing portion of the laws

and asked to defer the question. **Steve Wade** said that an increase of up to 5% could be incurred without a public hearing.

REP. OLSON asked if this is a permissive increase. **REP. BERGREN** answered, "Yes."

REP. MAEDJE asked if water districts currently send out bills on a monthly basis. **REP. BERGREN** said that it depends on the district. **REP. MAEDJE** said that if the only cost is notifying the people of a meeting perhaps that could be done through the bill distribution. **REP. BERGREN** said, "Yes, public meeting and advertising expenses are incurred in each district."

REP. RASER asked how many people currently attend notification hearings. **Steve Wade** answered that it varies. He said that many public hearings are held with little or no participation.

REP. RASER asked what the general rate increase is. **Mr. Wade** said he did not have that information. He said that it depended on whether there are maintenance costs, labor increases, or replacement costs.

REP. MAEDJE commented that the 5% or less rate increase may be too high for retired people and suggested that 2 1/2% might be more palatable for them. **Mr. Wade** said that he did not know if Rural Water Systems had taken a position, but depending on how often the increase was taken, that amount of increase would help.

CHAIRMAN NOENNIG asked if the Notice of Levy Assessment Hearing under Section 7-13-2281 gives notice of a hearing before assessment takes place. **Mr. Wade** said that he is not familiar with the statute. **CHAIRMAN NOENNIG** asked if this is a rate increase that is assessed without any prior notice if it is 5% or less. **Mr. Wade** said that the Water and Sewer District Boards are public entities that have to meet Public Meeting Laws. With a public hearing, boards have to go through a lot more mailings and publication. They have to send someone to record the proceeding and generate a transcript.

CHAIRMAN NOENNIG commented that this ability may be available in other code sections. If this change is going to be made, there should be a procedure to demand a hearing if someone objects to it. **CHAIRMAN NOENNIG** asked, "Have you researched that, or if not, can you respond to it?" **Mr. Wade** answered that he would look at that and find out. **CHAIRMAN NOENNIG** asked him to check 7-13-2281 and 7-13-2282.

Closing by Sponsor:

REP. BERGREN said that he was under the impression that objections would come under Public Hearing Notice laws 7-1-2121. He said that he was trying to make it easy to operate Water and Sewer Districts. He commented that all decisions would be made at public board meetings so it would be public information.

EXECUTIVE ACTION ON HB 682

{Tape: 2; Side: B; Approx. Time Counter: 13.3 - 21.7}

Motion/Vote: REP. FORRESTER moved that HB 682 BE TABLED. Motion carried unanimously, 16-0.

EXECUTIVE ACTION ON HB 690

Motion/Vote: REP. BITNEY moved that HB 690 BE TABLED. Motion carried unanimously, 16-0.

EXECUTIVE ACTION ON HB 517

Motion: REP. LAWSON moved that HB 517 DO PASS.

Motion: REP. LAWSON moved that HB 517 BE AMENDED.

Discussion:

REP. LAWSON said that the amendment in Exhibit 7 provides an immediate effective date.

EXHIBIT(loh42a07)

Vote: Motion carried unanimously, 16-0.

Motion: REP. LAWSON moved that HB 517 DO PASS AS AMENDED.

Motion: REP. OLSON moved that HB 517 BE AMENDED.

Discussion:

CHAIRMAN NOENNIG explained that the amendment in Exhibit 8 was submitted by Mary Whittinghill, President of Montana Taxpayers Association, along with a letter of explanation.

EXHIBIT(loh42a08)

REP. DEVLIN said that this was a HB 124 problem that came up and asked if the Sponsor of HB 517 could explain the bill to the Committee.

REP. BILL WILSON said that airports can levy up to two mills. He said that the Amendment is just technical in nature.

CHAIRMAN NOENNIG said that some airports have not levied any mills in the past two years and they lost their levying ability with the passage of HB 124. The authority to levy will act as security on current bonds and any future bonds.

Vote: Motion carried unanimously, 16-0.

Motion/Vote: **REP. OLSON** moved that HB 517 DO PASS AS AMENDED.
Motion carried unanimously, 16-0.

REP. DEVLIN asked that HB 517 be placed on the Consent Calendar.
CHAIRMAN NOENNIG and the Committee agreed.

EXECUTIVE ACTION ON HB 535

{Tape: 2; Side: B; Approx. Time Counter: 21.7 - 30}

Motion: **REP. JACOBSON** moved that HB 535 DO PASS.

Motion: **REP. JACOBSON** moved that HB 535 BE AMENDED.

Discussion:

Legislative Staffer Connie Erickson said that the amendment in Exhibit 9 puts the levy supporting the Study Commission to a vote.

EXHIBIT(loh42a09)

REP. JACOBSON commented that this now becomes a voted mill levy. If the voters approve the Study Commission but not the mill levy, the county commissioners will have to pay for the Study Commission out of their existing budget.

REP. OLSON said that the vote is for the Study Commission and the mill levy at the same time, they are not separate.

CHAIRMAN NOENNIG asked **REP. JACOBSON** if he had a reason why the two items would not be together. **REP. JACOBSON** said that he would hate to see the Study Commission concept not put into place because the mill levy did not pass. In that case, the county commissioners would have to take it out of their existing budget.

CHAIRMAN NOENNIG said that the current bill has an exception for the cap under 15-10-420 which is the cap for levies that was

passed long ago. He said that the language on Page 3, Line 23 should have been deleted previously.

REP. MENDENHALL asked if the bill is necessary. **REP. JACOBSON** said that county commissioners are currently allowed to do this, but a way has to be found to budget for the Study Commission in the existing budget if the voters approve. **REP. JACOBSON** said that the initial reason for the bill is to give county commissioners permissive levying authority up to one mill. He said that during the hearing, **REP. NOENNIG** had suggested making the increase a voted mill levy.

REP. MENDENHALL asked if commissioners could go out for a vote for something over the cap, under current law. **REP. JACOBSON** said that he was not sure and deferred to Mr. Blattie.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 11.3}

Mr. Blattie said that the way the amendment is drafted requires the vote to include both the levy and the creation of the Commission and eliminates a second election. Under current law, if the issue on the ballot is approved by the voters, the local government would be obligated to find some funding. The question is whether commissioners would be willing to take away from existing programs to fund the Study Commission, or whether they would simply deny funding.

REP. MENDENHALL asked, "Under current law, could you go to the voters with the language on this amendment?" **Mr. Blattie** said that a levy election would be held under 15-10-420 if someone chose to put this language on the ballot. He said that an attorney should determine the correct answer.

CHAIRMAN NOENNIG asked for comment on the concern that people might not want to approve the mill levy because they want the Commission funded another way, but they do not have that option. **Mr. Blattie** said that would remove the reason for the bill.

Vote: Motion carried unanimously, 16-0.

Motion: **REP. OLSON** moved that HB 535 DO PASS AS AMENDED.

Discussion:

REP. DEVLIN asked if the language for the permissive levy would be dropped with the adoption of this amendment.

Connie Erickson said that language in Section 2 was missed in the bill drafting and isn't needed.

CHAIRMAN NOENNIG stated that the Committee gives the Legislative Staffer the authority to amend the title. **Ms. Erickson** said that her concern is whether the Committee is going outside of the Title of the original bill by allowing for a voted levy.

CHAIRMAN NOENNIG said that going outside of the Title is permissible as long as the purpose of the bill is not changed.

REP. OLSON stated that Mr. Blattie's comment earlier was that with the amendment, the bill is no longer needed.

CHAIRMAN NOENNIG stated that Mr. Blattie had said that without the amendment the bill is no longer needed. If the amendment is split into two different elections, the bill is no longer needed.

REP. JACOBSON asked local attorney Ward Shanahan for his comments. **CHAIRMAN NOENNIG** and the Committee had no objections.

Ward Shanahan stated that Article 11, Section 9 of the Montana Constitution says that local government shall submit to the electorate the vote to review local government. Tying that mill levy to a vote may make the vote unconstitutional because a condition has been added to a part of the Constitution. Adding a mandatory mill levy is an additional condition that will convince a lot of voters not to review local government.

CHAIRMAN NOENNIG stated that with that information, the Committee is back to the original bill.

Motion/Vote: **REP. JACOBSON** moved that the **AMENDMENT IN EXHIBIT 9 BE STRICKEN**. Motion carried unanimously, 16-0.

Motion: **REP. JACOBSON** moved that **HB 535 DO PASS**.

Discussion:

REP. OLSON asked, "How many permissive levies are we going to allow? Soon there won't be any point in having any statute that says if you want to raise taxes you take it to the voters."

REP. DEVLIN spoke against the bill. He said that this is a permissive levy as the bill currently stands. He commented that he could not support allowing a local government entity to put a levy on the table without a vote.

Motion/Vote: **REP. MENDENHALL** moved that **HB 535 BE TABLED**. Motion carried 15-1 with **REP. JACOBSON** voting no.

EXECUTIVE ACTION ON HB 728

{Tape: 3; Side: A; Approx. Time Counter: 11.3 - 26}

Motion: REP. MORGAN moved that HB 728 DO PASS.

Substitute Motion/Vote: REP. OLSON made a substitute motion that HB 728 BE TABLED. Substitute motion carried 15-1 with REP. MAEDJE voting no.

EXECUTIVE ACTION ON HB 610

Motion: REP. MENDENHALL moved that HB 610 DO PASS.

Motion: REP. MAEDJE moved that HB 610 BE AMENDED.

Discussion:

REP. MAEDJE stated that his conceptual amendment would change Page 1, Line 19, Subsection (4) after "less than or equal to 5%" and add "in any calendar year."

REP. FORRESTER voiced opposition. He said that 5% is enough. REP. LAWSON said that a better amendment might say 5% every fiscal year, as opposed to every calendar year. REP. FORRESTER said that fiscal year would work better. CHAIRMAN NOENNIG suggested that either year would work. Connie Erickson explained that it doesn't matter whether the amendment says calendar year or fiscal year because this is not a property tax.

CHAIRMAN NOENNIG suggested that the amendment could say, "no more often than annually, or once annually."

CHAIRMAN NOENNIG asked Ms. Erickson to draft the amendment to say either "in any year" or "annually." He said that the concept is 5% once in a year.

Vote: Motion carried unanimously, 16-0 on a voice vote.

Motion: REP. DEVLIN moved that HB 610 DO PASS AS AMENDED.

Discussion:

REP. MORGAN said that testimony indicated this increase was needed to pay for notification of a hearing. She voiced concern that this is a way to get a rate increase without the increase being protested at a hearing. She commented that allowing a rate increase of 5% every year could get to be a substantial amount.

REP. FORRESTER explained that if there was a monthly charge and 10,000 gallons were used, the rate increase per month is minimal. He emphasized that a district typically incurs major costs such as a well going dry, or the system needing an upgrade, etc.

REP. MENDENHALL expressed concern. He said that having a rate increase that people aren't aware of might cause the commissioners more hassle than it would to "notice" a meeting, even if no one shows up. He said that he was opposed.

REP. CARNEY said that the water board in that kind of a district would be sensitive to that kind of thing and probably wouldn't raise the charge without a hearing. She said that at least the authority would be there in other places if they want it and that 5% won't make that much difference.

REP. RASER asked if an elected board will determine these rates.

REP. BITNEY said that some are elected and some are appointed.

REP. FORRESTER said that if a vacancy occurs, the county commissioners appoint someone to fill that vacancy and then hold a special election. The original board is all appointed and they serve a staggered period of time unless the commissioner is petitioned to appoint the board.

REP. RASER said that this doesn't mean that there will be a 5% increase every year. It just allows a little flexibility up to 5% so that funds can be spent in the district instead of on public noticing.

Vote: Motion carried 11-5 with **REPS. BECKER, HAWK, LAWSON, MORGAN, and MENDENHALL** voting no, on a roll call vote.

EXECUTIVE ACTION ON HB 625

Motion: **REP. CARNEY** moved that HB 625 DO PASS.

Discussion:

REP. BECKER asked for an explanation of what this means. **Connie Erickson** explained that the levy is a voted levy that is subject to the provisions of 15-10-425.

REP. MAEDJE asked if this levy is outside the cap. **CHAIRMAN NOENNIG** said that it is a voted levy outside the cap.

REP. MENDENHALL asked someone to address whether this levy falls under "health and safety" and if there are any issues related to this levy. He asked what proper functions of government there

are as relates to towns, cities, and municipalities and if this levy falls logically within those.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 4.5}

Substitute Motion/Vote: REP. MAEDJE moved that HB 625 BE TABLED. Substitute Motion failed 5-11 with REPS. BITNEY, DEVLIN, HAWK, MAEDJE, and MORGAN voting aye, by roll call vote.

Discussion:

Connie Erickson stated that this levy would probably not fit under the County Public Safety Levy and she did not know of a levy that would cover prevention programs.

CHAIRMAN NOENNIG commented to REP. MENDENHALL that the power of a local government allowed by statute would fall within Article 11, Section 4 of the Montana Constitution. He reminded the Committee, "We are back on the original 'do pass' motion."

Vote: Motion passed 9-7 with REPS. HAWK, DEVLIN, MAEDJE, BITNEY, LAWSON, MORGAN, AND MENDENHALL voting no, on a voice vote.

EXECUTIVE ACTION ON HB 712

{Tape: 3; Side: B; Approx. Time Counter: 4.8 - 30}

Harold Blattie, Montana Association of Counties (MACo), said that he has amendments to the bill. He added that the Proponents have assured MACo that there was never an intent to involve counties.

CHAIRMAN NOENNIG asked if the Proponents agreed with MACo on this language. **Mr. Blattie** answered, "Yes."

Motion: REP. DEVLIN moved that HB 712 DO PASS.

Motion: CHAIRMAN NOENNIG moved that HB 712 BE AMENDED.

Discussion:

Connie Erickson said that the amendment would occur on Page 3. Following Line 22 would be a new Subsection (a) which would read: "for the imposition of conditions or restrictions under the local government regulations in effect at the time of the establishment of the vested property right."

CHAIRMAN NOENNIG said that the purpose of the amendment is to ensure the flexibility of local governments so that existing rules and regulations are not hampered by this bill.

REP. HAWK asked if the Sponsor agreed to the amendment. Without objection from the Committee, **CHAIRMAN NOENNIG** asked for verification from the Proponents of the bill.

Mark Evans, Southwest Montana Building Industry Association, Bozeman, said that the Proponents have no objection to the amendment. He added that he had not spoken to **REP. SINRUD**, the Sponsor of the bill, and could not answer for him.

CHAIRMAN NOENNIG said that he read the amendment to **REP. SINRUD** earlier and that he seemed to be in concurrence.

Vote: Motion carried unanimously, 16-0.

Motion: **REP. OLSON** moved that HB 712 DO PASS AS AMENDED.

Motion: **REP. OLSON** moved that HB 712 BE FURTHER AMENDED.

Discussion:

Connie Erickson explained the conceptual amendments which Harold Blattie requested. She said that Page 2, Line 2 is further defined to exclude a consolidated city-county. Page 2, Line 16 strikes "terms and conditions" and inserts "regulations in effect at the time of the submission....." She stated that this bill will only apply to a municipality. The bill will not apply to a county or a consolidated city-county government.

REP. OLSON asked, "Why does this cover cities and exclude counties?" He said that he would oppose the Amendment. With no objection from the Committee, **CHAIRMAN NOENNIG** asked Mr. Blattie to respond.

Harold Blattie answered that counties deal with subdivisions and limited zoning, but counties do not manage "site-specific development plans." He said that was why the language was written to exclude counties.

CHAIRMAN NOENNIG asked why a city-county government would be excluded. Mr. Blattie deferred to Mr. Evans. **CHAIRMAN NOENNIG** said there was no objection from either him or the Committee and asked Mr. Evans to speak. **Mark Evans** answered that most counties only deal with subdivisions and they wanted the bill to be narrowed down. **REP. OLSON** withdrew his objections.

CHAIRMAN NOENNIG commented that he would still like to hear why "consolidated city-county" is being deleted.

REP. MENDENHALL suggested segregating the two amendments.

CHAIRMAN NOENNIG asked the Committee to convince him that the amendment on Page 2, Lines 2-3 is needed.

REP. LASLOVICH said that he would oppose the amendment that strikes consolidated city-county because of his experience in Anaconda with the local government.

Vote: Motion fails 0-16.

CHAIRMAN NOENNIG said that the second part of the amendment is on Page 2, Line 16 and will strike "terms and conditions" and insert "regulations in effect at the time of the submission."

Discussion:

REP. LAWSON stated that new language in the amendment regarding no changes being allowed for two years may be a problem.

CHAIRMAN NOENNIG said that the answer is on Page 2, Lines 25-26 where it says, "written receipt showing the date the site-specific development plan was first submitted." He said that has to include all the items on Lines 6-13.

REP. LAWSON referred to the language on Line 19 that says "complete" application. He asked, "Is that the same thing?"

CHAIRMAN NOENNIG said that he understood that the application is for approval or conditional approval of a site-specific development plan. The application is submitted with a plan that is supposed to be complete. He commented, "When you get the written receipt, the game is started and the rules don't change."

REP. RASER said there may be a conflict and asked, "If the applicant does not submit complete information, would it follow that the application would not be approved? Can the city disapprove the application because the information was incomplete?" She said that her concern is that someone would submit an application just to get in under certain regulations.

CHAIRMAN NOENNIG read Page 2, Lines 15-16 and said that the current language of the bill says, "....under the terms and conditions...." The amendment says something different, "....regulations in effect at the time of submission...." He commented that if there is concern about the terms and conditions

varying, delete that language and say, "under the site-specific development plan."

CHAIRMAN NOENNIG said that the issue is whether or not you want to change the definition of a vested property right and he said he was not sure that was necessary. He asked Harold Blattie to comment if no one had objections.

Harold Blattie spoke about Lines 15-16 on Page 2 and said that MACo feels that the developer is making the terms and conditions. He asked, "Shouldn't it be the governing body that has rules and ordinances at the time of the subdivision request?"

CHAIRMAN NOENNIG said he understood that Page 2, Lines 15-16 define what is contained in Lines 6-13. He said that those are the terms and conditions of the plan. The vested property right means to complete the project the way it was submitted. Local government can approve or disapprove the project based on the regulations that are in Section 5 on Page 3.

Harold Blattie said that the hour is late to get the right resources for making this amendment work.

CHAIRMAN NOENNIG agreed and said that would be a material change. The purpose of the bill is reasonably well understood without this amendment.

REP. MORGAN suggested moving the bill as it is and the Senate side can work with Mr. Blattie and fix it over there. She commented that the intent is good.

REP. MAEDJE said that he opposed the amendment and that CHAIRMAN NOENNIG's amendment takes care of Section 5.

REP. BECKER supported the amendment and said that she thought the amendment was saying the terms and conditions were written under Section 4. She stated, "In other words, you get the vested property right if your development plan follows the rules and regulations in effect at the time."

Vote: Motion failed 1-15 with REP. BECKER voting yes.

CHAIRMAN NOENNIG explained they are back on the bill with one Amendment.

Vote: Motion carried 15-1 with REP. CYR voting no.

ADJOURNMENT

Adjournment: 6:40 P.M.

REP. MARK NOENNIG, Chairman

LINDA KEIM, Secretary

MN/LK

EXHIBIT (loh42aad)